

AMENDED IN SENATE MARCH 11, 1999

AMENDED IN SENATE MARCH 1, 1999

**SENATE BILL**

**No. 219**

**Introduced by Senator Peace**

January 21, 1999

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An act to amend Sections 876, 904.1, 906, 1204, and 1800 of, ~~and to add Section 917.85 to,~~ the Code of Civil Procedure, relating to court proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 219, as amended, Peace. Court proceedings.

Existing law provides with respect to contribution among joint judgment debtors, that the pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.

This bill would provide, as an exception thereto, that where a judgment apportions fault amongst joint tortfeasors pursuant to the principles of comparative fault, the pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment in proportion to their individual liability pursuant to the doctrine of comparative fault.

The bill would also state the intent of the Legislature in this regard.

~~Existing law provides that an appeal may be taken from a judgment or various types of orders, as specified, and that the reviewing court may review the verdict or decision, and other~~

~~specific types of rulings, proceedings, orders, or decisions, as specified.~~

~~This bill would provide that an appeal may be taken from an order not otherwise appealable, as specified, if the court that made the order certifies that immediate appellate review of the order may materially advance the ultimate termination of the litigation, and also certifies that the order involves a controlling question of law, or resolves a significant portion of the action and immediate appellate review is necessary to prevent significant prejudice to the parties or to reduce the probability of retrial, or the order involves an unresolved point of law, as specified. The bill would provide that the perfecting of an appeal under these provisions would not stay the action, except as specified. The bill would also require the Judicial Council to adopt rules to implement these provisions.~~

Existing law establishes the priority of allowed unsecured claims for specified wages, salaries, or commissions to the extent of \$2,000 for each individual and allowed unsecured claims for specified contributions to an employee benefit plan to the extent of the number of employees covered by the plan multiplied by \$2,000 less a specified amount.

This bill would provide that the term “commissions” includes specified sales commissions and would increase the \$2,000 limit and multiple to \$4,300.

Existing law provides that an assignee of any general assignment for the benefit of specified creditors may recover any transfer or property of the assignor that meets certain requirements. Existing law exempts from this recovery a transfer of a security interest in property acquired by the assignor to the extent that the security interest secures new value, as specified, and is perfected within 10 days after the security interest attaches.

This bill would revise this exemption to include the above-described security interest that is perfected within 20 days after the security interest attaches.

This bill would also exempt a transfer to the extent that it was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 876 of the Code of Civil Procedure is amended to read:

876. (a) Except as provided in subdivision (b), the pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.

(b) Where a judgment apportions fault amongst joint tortfeasors pursuant to the principles of comparative fault, the pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment in proportion to their individual liability pursuant to the doctrine of comparative fault.

(c) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them.

~~SEC. 1.5. Section 904.1 of the Code of Civil Procedure is amended to read:~~

~~904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:~~

~~(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt that is made final and conclusive by Section 1222, or (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court or the judge or judges thereof that relates to a matter pending in the municipal or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.~~

~~(2) From an order made after a judgment made appealable by paragraph (1).~~

- 1 ~~(3) From an order granting a motion to quash service~~  
2 ~~of summons or granting a motion to stay or dismiss the~~  
3 ~~action on the ground of inconvenient forum.~~
- 4 ~~(4) From an order granting a new trial or denying a~~  
5 ~~motion for judgment notwithstanding the verdict.~~
- 6 ~~(5) From an order discharging or refusing to discharge~~  
7 ~~an attachment or granting a right to attach order.~~
- 8 ~~(6) From an order granting or dissolving an~~  
9 ~~injunction, or refusing to grant or dissolve an injunction.~~
- 10 ~~(7) From an order appointing a receiver.~~
- 11 ~~(8) From an interlocutory judgment, order, or decree,~~  
12 ~~hereafter made or entered in an action to redeem real or~~  
13 ~~personal property from a mortgage thereof, or a lien~~  
14 ~~thereon, determining the right to redeem and directing~~  
15 ~~an accounting.~~
- 16 ~~(9) From an interlocutory judgment in an action for~~  
17 ~~partition determining the rights and interests of the~~  
18 ~~respective parties and directing partition to be made.~~
- 19 ~~(10) From an order made appealable by the provisions~~  
20 ~~of the Probate Code or the Family Code.~~
- 21 ~~(11) From an interlocutory judgment directing~~  
22 ~~payment of monetary sanctions by a party or an attorney~~  
23 ~~for a party if the amount exceeds five thousand dollars~~  
24 ~~(\$5,000).~~
- 25 ~~(12) From an order directing payment of monetary~~  
26 ~~sanctions by a party or an attorney for a party if the~~  
27 ~~amount exceeds five thousand dollars (\$5,000).~~
- 28 ~~(13) From an order not otherwise made appealable~~  
29 ~~pursuant to this section, in a case that is not a limited civil~~  
30 ~~action, if the court that made the order does both of the~~  
31 ~~following:~~
  - 32 ~~(A) The court certifies that it is of the opinion that~~  
33 ~~immediate appellate review of the order may materially~~  
34 ~~advance the ultimate termination of the litigation.~~
  - 35 ~~(B) The court certifies that one or more of the~~  
36 ~~following conditions have been met:~~
    - 37 ~~(i) The order involves a controlling question of law as~~  
38 ~~to which there is a substantial ground of difference of~~  
39 ~~opinion.~~

1     (ii) The order resolves a significant portion of the  
2     action and immediate appellate review is necessary to  
3     prevent significant prejudice to the parties, or to reduce  
4     the probability of retrial of the matter.

5     (iii) The order involves an unresolved point of law of  
6     great public interest.

7     (b) Sanction orders or judgments of five thousand  
8     dollars (\$5,000) or less against a party or an attorney for  
9     a party may be reviewed on an appeal by that party after  
10    entry of final judgment in the main action, or, at the  
11    discretion of the court of appeal, may be reviewed upon  
12    petition for an extraordinary writ.

13    (c) The Judicial Council shall adopt rules, including  
14    time requirements, to implement paragraph (13) of  
15    subdivision (a).

16    SEC. 2. Section 906 of the Code of Civil Procedure is  
17    amended to read:

18    906. (a) Upon an appeal pursuant to Section 904.1 or  
19    904.2, the reviewing court may review the verdict or  
20    decision and any intermediate ruling, proceeding, order  
21    or decision which involves the merits or necessarily  
22    affects the judgment or order appealed from or which  
23    substantially affects the rights of a party, including, on any  
24    appeal from the judgment, any order on motion for a new  
25    trial, and may affirm, reverse or modify any judgment or  
26    order appealed from and may direct the proper  
27    judgment or order to be entered, and may, if necessary  
28    or proper, direct a new trial or further proceedings to be  
29    had. The respondent, or party in whose favor the  
30    judgment was given, may, without appealing from such  
31    judgment, request the reviewing court to and it may  
32    review any of the foregoing matters for the purpose of  
33    determining whether or not the appellant was prejudiced  
34    by the error or errors upon which he relies for reversal or  
35    modification of the judgment from which the appeal is  
36    taken.

37    (b) The provisions of this section do not authorize the  
38    reviewing court to review any decision or order from  
39    which an appeal might have been taken.

~~(c) Subdivision (b) does not apply to an order from which an appeal might have been taken pursuant to paragraph (13) of subdivision (a) of Section 904.1 unless the trial court actually made that order appealable pursuant to paragraph (13) of subdivision (a) of Section 904.1.~~

~~SEC. 3. Section 917.85 is added to the Code of Civil Procedure, to read:~~

~~917.85. (a) The perfecting of an appeal pursuant to paragraph (13) of subdivision (a) of Section 904.1 shall not stay the action unless so ordered by the court that made the order appealed from pursuant to paragraph (13) of subdivision (a) of Section 904.1.~~

~~(b) The Judicial Council shall adopt rules to implement this section.~~

~~SEC. 4.~~

*SEC. 2.* Section 1204 of the Code of Civil Procedure is amended to read:

1204. When any assignment, whether voluntary or involuntary, and whether formal or informal, is made for the benefit of creditors of the assignor, or results from any proceeding in insolvency or receivership commenced against him or her, or when any property is turned over to the creditors of a person, firm, association or corporation, or to a receiver or trustee for the benefit of creditors, the following claims have priority in the following order:

(a) Allowed unsecured claims for wages, salaries, or commissions, including vacation, severance and sick leave pay earned by an individual within 90 days before the date of the making of such assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first; but only to the extent of four thousand three hundred dollars (\$4,300) for each individual.

(b) Allowed unsecured claims for contributions to employee benefit plans arising from services rendered within 180 days before the date of the making of the assignment or the taking over of the property or the

1 commencement of the court proceeding or the date of  
2 the cessation of the debtor's business, whichever occurs  
3 first; but only for each employee benefit plan, to the  
4 extent of the number of employees covered by the plan  
5 multiplied by four thousand three hundred dollars  
6 (\$4,300), less the aggregate amount paid to the  
7 employees under subdivision (a), plus the aggregate  
8 amount paid by the estate on behalf of the employees to  
9 any other employee benefit plan. These claims shall be  
10 paid by the trustee, assignee or receiver before the claim  
11 of any other creditor of the assignor, insolvent, or debtor  
12 whose property is so turned over, and shall be paid as soon  
13 as the money with which to pay same becomes available.  
14 If there is insufficient money to pay all the labor claims in  
15 full, the money available shall be distributed among the  
16 claimants in proportion to the amount of their respective  
17 claims. The trustee, receiver or assignee for the benefit of  
18 creditors shall have the right to require sworn claims to  
19 be presented and shall have the right to refuse to pay any  
20 such preferred claim, either in whole or in part, if he or  
21 she has reasonable cause to believe that a claim is not valid  
22 but shall pay any part thereof that is not disputed, without  
23 prejudice to the claimant's rights, as to the balance of his  
24 or her claim, and withhold sufficient money to cover the  
25 disputed portion until the claimant in question has a  
26 reasonable opportunity to establish the validity of his or  
27 her claim by court action, either in his or her own name  
28 or through an assignee.

29 This section is binding upon all the courts of this state  
30 and in all receivership actions the court shall order the  
31 receiver to pay promptly out of the first receipts and  
32 earnings of the receivership, after paying the current  
33 operating expenses, such preferred labor claims.

34 (c) The term "commissions" for purposes of  
35 subdivision (a) shall include sales commissions earned by  
36 an individual, or by a corporation with only one  
37 employee, acting as an independent contractor in the sale  
38 of goods or services of the debtor in the ordinary course  
39 of the debtor's business if, and only if, during the 12  
40 months preceding the date of the making of the

1 assignment or the taking over of the property or the  
2 commencement of the proceeding or the date of the  
3 cessation of the debtor's business, whichever occurs first,  
4 at least 75 percent of the amount that the individual or  
5 corporation earned by acting as an independent  
6 contractor in the sale of goods or services was earned from  
7 the debtor.

8 ~~SEC. 5.~~

9 *SEC. 3.* Section 1800 of the Code of Civil Procedure is  
10 amended to read:

11 1800. (a) In this section:

12 (1) The term "insolvent" means:

13 (A) With reference to a person other than a  
14 partnership, a financial condition such that the sum of the  
15 person's debts is greater than all of the person's property,  
16 at a fair valuation, exclusive of both of the following:

17 (i) Property transferred, concealed, or removed with  
18 intent to hinder, delay, or defraud the person's creditors.

19 (ii) Property that is exempt from property of the  
20 estate pursuant to the election of the person made  
21 pursuant to Section 1801.

22 (B) With reference to a partnership, financial  
23 condition such that the sum of the partnership's debts are  
24 greater than the aggregate of, at a fair valuation, both of  
25 the following:

26 (i) All of the partnership's property, exclusive of  
27 property of the kind specified in clause (i) subparagraph  
28 (A).

29 (ii) The sum of the excess of the value of each general  
30 partner's separate property, exclusive of property of the  
31 kind specified in clause (ii) of subparagraph (A), over the  
32 partner's separate debts.

33 (2) The term "inventory" means personal property  
34 leased or furnished, held for sale or lease, or to be  
35 furnished under a contract for service, raw materials,  
36 work in process, or materials used or consumed in a  
37 business, including farm products such as crops or  
38 livestock, held for sale or lease.

39 (3) The term "insider" means:



(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.

(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:

(i) A director of the assignor.

(ii) An officer of the assignor.

(iii) A person in control of the assignor.

(iv) A partnership in which the assignor is a general partner.

(v) A general partner of the assignor.

(vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:

(i) A general partner in the assignor.

(ii) A relative of a general partner in, general partner of, or person in control of the assignor.

(iii) A partnership in which the assignor is a general partner.

(iv) A general partner of the assignor.

(v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, “relative” means an individual related by affinity or consanguinity with the third degree as determined by the common law, or an individual in a step or adoptive relationship within the third degree; and an “affiliate” means a person that directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the assignor or 20 percent or more of whose outstanding voting securities are directly or indirectly

1 owned, controlled or held with power to vote by the  
2 assignor (excluding securities held in a fiduciary or  
3 agency capacity without sole discretionary power to vote,  
4 or held solely to secure a debt if the holder has not in fact  
5 exercised the power to vote), or a person who operates  
6 the business of the assignor under a lease or operating  
7 agreement or whose business is operated by the assignor  
8 under a lease or operating agreement.

9 (4) The term “judicial lien” means a lien obtained by  
10 judgment, levy, sequestration, or other legal or equitable  
11 process or proceeding.

12 (5) The term “new value” means money or money’s  
13 worth in goods, services, or new credit, or release by a  
14 transferee of property previously transferred to the  
15 transferee in a transaction that is neither void nor  
16 voidable by the assignor or the assignee under any  
17 applicable law, but does not include an obligation  
18 substituted for an existing obligation.

19 (6) The term “receivable” means a right to payment,  
20 whether or not the right has been earned by  
21 performance.

22 (7) The term “security agreement” means an  
23 agreement that creates or provides for a security interest.

24 (8) The term “security interest” means a lien created  
25 by an agreement.

26 (9) The term “statutory lien” means a lien arising  
27 solely by force of a statute on specified circumstances or  
28 conditions, or lien of distress for rent, whether or not  
29 statutory, but does not include security interest or judicial  
30 lien, whether or not the interest or lien is provided by or  
31 is dependent on a statute and whether or not the interest  
32 or lien is made fully effective by statute.

33 (10) The term “transfer” means every mode, direct or  
34 indirect, absolute or conditional, voluntary or  
35 involuntary, or disposing of or parting with property or  
36 with an interest in property, including retention of title  
37 as a security interest.

38 (b) Except as provided in subdivision (c), the assignee  
39 of any general assignment for the benefit of creditors (as

1 defined in Section 493.010) may recover any transfer of  
2 property of the assignor:

3 (1) To or for the benefit of a creditor;

4 (2) For or on account of an antecedent debt owed by  
5 the assignor before the transfer was made;

6 (3) Made while the assignor was insolvent;

7 (4) Made on or within 90 days before the date of the  
8 making of the assignment or made between 90 days and  
9 one year before the date of making the assignment if the  
10 creditor, at the time of the transfer, was an insider and  
11 had reasonable cause to believe the debtor was insolvent  
12 at the time of the transfer; and

13 (5) That enables the creditor to receive more than  
14 another creditor of the same class.

15 (c) The assignee may not recover under this section a  
16 transfer:

17 (1) To the extent that the transfer was:

18 (A) Intended by the assignor and the creditor to or for  
19 whose benefit the transfer was made to be a  
20 contemporaneous exchange for new value given to the  
21 assignor; and

22 (B) In fact a substantially contemporaneous exchange;

23 (2) To the extent that the transfer was:

24 (A) In payment of a debt incurred in the ordinary  
25 course of business or financial affairs of the assignor and  
26 the transferee;

27 (B) Made in the ordinary course of business or  
28 financial affairs of the assignor and the transferee; and

29 (C) Made according to ordinary business terms;

30 (3) Of a security interest in property acquired by the  
31 assignor:

32 (A) To the extent the security interest secures new  
33 value that was:

34 (i) Given at or after the signing of a security  
35 agreement that contains a description of the property as  
36 collateral;

37 (ii) Given by or on behalf of the secured party under  
38 the agreement;

39 (iii) Given to enable the assignor to acquire the  
40 property; and

1 (iv) In fact used by the assignor to acquire the  
2 property; and

3 (B) That is perfected within 20 days after the security  
4 interest attaches;

5 (4) To or for the benefit of a creditor, to the extent  
6 that, after the transfer, the creditor gave new value to or  
7 for the benefit of the assignor:

8 (A) Not secured by an otherwise unavoidable security  
9 interest; and

10 (B) On account of which new value the assignor did  
11 not make an otherwise unavoidable transfer to or for the  
12 benefit of the creditor;

13 (5) Of a perfected security interest in inventory or a  
14 receivable or the proceeds of either, except to the extent  
15 that the aggregate of all the transfers to the transferee  
16 caused a reduction, as of the date of the making of the  
17 assignment and to the prejudice of other creditors  
18 holding unsecured claims, of any amount by which the  
19 debt secured by the security interest exceeded the value  
20 of all security interest for the debt on the later of:

21 (A) Ninety days before the date of the making of the  
22 assignment.

23 (B) The date on which new value was first given under  
24 the security agreement creating the security interest; or

25 (6) That is the fixing of a statutory lien.

26 (7) That is payment to a claimant, as defined in Section  
27 3085 of the Civil Code, in exchange for the claimant's  
28 waiver or release of any potential or asserted claim of lien,  
29 stop notice, or right to recover on a payment bond, or any  
30 combination thereof.

31 (8) To the extent that the transfer was a bona fide  
32 payment of a debt to a spouse, former spouse, or child of  
33 the debtor, for alimony to, maintenance for, or support of,  
34 the spouse or child, in connection with a separation  
35 agreement, divorce decree, or other order of a court of  
36 record, or a determination made in accordance with state  
37 or territorial law by a governmental unit, or property  
38 settlement agreement; but not to the extent that the debt  
39 is either assigned to another entity voluntarily, by  
40 operation of law or otherwise, or includes a liability

1 designated as alimony, maintenance, or support, unless  
2 the liability is actually in the nature of alimony,  
3 maintenance, or support.

4 (d) An assignee of any general assignment for the  
5 benefit of creditors (as defined in Section 493.010), may  
6 avoid a transfer of property of the assignor transferred to  
7 secure reimbursement of a surety that furnished a bond  
8 or other obligation to dissolve a judicial lien that would  
9 have been avoidable by the assignee under subdivision  
10 (b) of this section. The liability of the surety under the  
11 bond or obligation shall be discharged to the extent of the  
12 value of the property recovered by the assignee or the  
13 amount paid to the assignee.

14 (e) (1) For the purposes of this section:

15 (A) A transfer of real property other than fixtures, but  
16 including the interest of a seller or purchaser under a  
17 contract for the sale of real property, is perfected when  
18 a bona fide purchaser of the property from the debtor  
19 against whom applicable law permits the transfer to be  
20 perfected cannot acquire an interest that is superior to  
21 the interest of the transferee.

22 (B) A transfer of a fixture or property other than real  
23 property is perfected when a creditor on a simple  
24 contract cannot acquire a judicial lien that is superior to  
25 the interest of the transferee.

26 (2) For the purposes of this section, except as provided  
27 in paragraph (3), a transfer is made at any of the following  
28 times:

29 (A) At the time the transfer takes effect between the  
30 transferor and the transferee, if the transfer is perfected  
31 at, or within 10 days after, the time, except as provided in  
32 subparagraph (B) of paragraph (3) of subdivision (c).

33 (B) At the time the transfer is perfected, if the transfer  
34 is perfected after the 10 days.

35 (C) Immediately before the date of the making of the  
36 assignment if the transfer is not perfected at the later of:

37 (i) The making of the assignment.

38 (ii) Ten days after the transfer takes effect between  
39 the transferor and the transferee.

1 (3) For the purposes of this section, a transfer is not  
2 made until the assignor has acquired rights in the  
3 property transferred.

4 (f) For the purposes of this section, the assignor is  
5 presumed to have been insolvent on and during the 90  
6 days immediately preceding the date of the making of the  
7 assignment.

8 (g) An action by an assignee under this section must  
9 be commenced within one year after the making of the  
10 assignment.

11 ~~SEC. 6.~~

12 *SEC. 4.* It is the intent of the Legislature in enacting  
13 Section 1 of this act to abrogate the decision of the court  
14 of appeal in *Lamberton v. Rhodes-Jamieson*, (1988) 199  
15 Cal.App.3d 748 to the extent that the decision holds that,  
16 in certain instances, there is no right of contribution  
17 pursuant to Title 11 (commencing with Section 875) of  
18 Part 2 of the Code of Civil Procedure in proportion to the  
19 degree of fault pursuant to the principles of comparative  
20 fault.

